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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEB 15 2005

In the Matter of

Federal Communications Commission
Office of Secretary

Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Gonzales, Houma and Westwego, Louisiana,)
and Hattiesburg, Mississippi))

MB Docket No. 02-295

RM - 10580

RM - 11149

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS

Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Stations WUSW(FM), Hattiesburg, Mississippi and KSTE-FM (formerly KFXN-FM), Houma, Louisiana, by its counsel, hereby files its Reply Comments to the proposal of Guaranty Broadcasting Company of Baton Rouge, LLC ("Guaranty") in the above-captioned proceeding.¹

1. The *Notice of Proposed Rule Making* in this proceeding set forth Clear Channel's proposal to (i) relocate Station WUSW from Channel 279C at Hattiesburg, Mississippi to 279C0 at Westwego, Louisiana and (ii) relocate Station KSTE-FM from Channel 281C at Houma, Louisiana to 281C0 at Gonzales, Louisiana.² On the comment deadline of November 18, 2002, Guaranty filed a separate petition for rule making proposing to relocate Station WTBE, Channel 264C1, from Baton Rouge, Louisiana to Gonzales, Louisiana.³

¹ The *Public Notice* (Report No. 2689, rel. Jan. 31, 2005) set a period of fifteen days for the filing of reply comments.

² 17 FCC Rcd 18113 (2002).

³ On November 19, 2002, Guaranty filed its *Opposition Comments With Alternative Proposal*. However, this pleading was filed one day late, and cannot be considered in this proceeding.

2. Guaranty's proposal is not technically in conflict with Clear Channel's proposal. Indeed, both proposals can be granted. However, both Guaranty's proposal and Clear Channel's proposal seek to provide Gonzales with its first local service, and only one proposal can do that. The other proposal must be treated as requesting a second local service for Gonzales.

3. Under Commission case law, Clear Channel's proposal is given credit for providing Gonzales with its first local service. In *Cloverdale, Point Arena, and Cazadero, California*, 15 FCC Rcd 17927 (2000), the Commission appeared to endorse a policy in which the first to file received credit for the first local service. The Commission had issued a notice of proposed rule making proposing to allot a channel to Cloverdale, California. 14 FCC Rcd 8825 (1999). Just as in this proceeding, the Commission then received a second proposal for the same community on the comment deadline. With no discussion of the comparative merits of the two proposals, the Commission granted the first proposal and considered the later-filed proposal as providing a second local service. 15 FCC Rcd at 17927. Following the *Cloverdale* logic, Clear Channel, as the first to file, would receive credit for providing Gonzales with its first local service. See also *Paonia and Olathe, Colorado*, 16 FCC Rcd 22109 (2001); *Galveston and Missouri City, Texas*, 16 FCC Rcd 747 (2001)

4. However, the Commission has also taken a different approach under similar circumstances and compared the merits of two proposals for the same community. But regardless of which methodology is used, Clear Channel would prevail in this case. In *Keeseville, New York, Hartford and White River Junction, Vermont*, 19 FCC Rcd 16106, the Commission noted that although both proposals for Keeseville furthered priority (3), the populations of the communities receiving a first local service were the same. 19 FCC Rcd 16106

at ¶ 9. Therefore, the decision between the proposals was based on other priority (4) considerations. *Id. Accord, Harrisburg and Albemarle, North Carolina*, 11 FCC Rcd 2511 (1996). In this case, however, the populations of the communities receiving a first local service are *not* the same. Guaranty's proposal would provide a first local service only at Gonzales (2000 pop. 8,156). Clear Channel's proposal would provide a first local service at Gonzales *and* at Westwego (2000 pop. 10,763), for a combined population of 18,919. In deciding between proposals that further priority (3), the Commission prefers the proposal offering new first local service to the largest combined community population. *Coon Valley and Westby, Wisconsin, and Lanesboro, Minnesota*, 13 FCC Rcd 10240 (1998), *pet. for recon. denied*, 15 FCC Rcd 10069 (2000).⁴ Accordingly, Clear Channel's proposal is clearly favored over Guaranty's proposal and should receive credit for providing a first local service at Gonzales.⁵

5. Granting Clear Channel's proposal does not mean that Guaranty's proposal must be denied. As discussed above, the two proposals are not mutually exclusive. However, Guaranty's proposal must be treated as providing a second local service. In *Cloverdale, Point Arena, and Cazadero, California*, *supra*, the Commission granted both proposals for the same community, treating the first as providing a first local service and the second as providing a

⁴ Guaranty contends that its Gonzales proposal is to be preferred over Clear Channel's because it involves no loss area. See Guaranty's Petition for Consolidation (filed Nov. 18, 2002). Contrary to Guaranty's assertion, the Commission does not consider service gains and losses when comparing two proposals that both further priority (3). Instead, the decision is based strictly on the populations of the respective communities. See *Cumberland, Kentucky, et al.*, 17 FCC Rcd 5024 (2002).

⁵ Even if the Commission decides, incorrectly, that Guaranty's proposal is entitled to a first local service preference at Gonzales, it should still grant Clear Channel's proposal. In that case, the proposal would provide a first local service at Westwego, a first competitive service at Gonzales, and a net gain in 60 dBu radio service to more than half a million people. With all loss areas remaining well served with an abundance of radio signals, this would present a preferential arrangement of allotments. In particular, providing Gonzales with its first competitive service is preferred under priority (4) over retaining three local services at Houma. See *Clinton and Oliver Springs, Tennessee*, 16 FCC Rcd 19604 (2001).

second local service. Here, Guaranty's proposal for a second local service at Gonzales may similarly be considered and granted if it is found to further the Commission's priorities. *See, e.g., Hallie and Ladysmith, Wisconsin*, 10 FCC Rcd 9257 (1995).

WHEREFORE, for the foregoing reasons, the Commission should grant Clear Channel's petition for rule making to provide first local services at Westwego and Gonzales. In addition, it should grant Guaranty's proposal to provide Gonzales with its second local and first competitive service.

Respectfully submitted,

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February 15, 2005

CERTIFICATE OF SERVICE

I, Lisa M. Holland, a secretary with the law firm of Vinson & Elkins, L.L.P., hereby certify that copies of the foregoing "**Reply Comments**" were served on this 15th day of February, 2005, via first-class mail, on the following:

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